

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RODNEY L. GARROTT,

Petitioner,

v.

MAGGIE MILLER-STOUT, Superintendent,  
Airway Heights Correctional Center,

Respondent.

CASE NO: C06-1475 JCC

ORDER

This matter comes before the Court on Petitioner's Motion for Certificate of Appealability (Dkt. No. 29). The Court has considered the papers submitted by the parties and hereby finds and rules as follows.

**I. LEGAL STANDARD**

Under the Antiterrorism and Effective Death Penalty Act, an unsuccessful habeas petitioner must first obtain a certificate of appealability ("COA") before he may appeal a district court's denial of habeas relief to the Court of Appeals. 28 U.S.C. § 2253(c). When the district court has not reached the merits of the petition, but rather denied it on procedural grounds, a COA should issue if the Petitioner successfully demonstrates that jurists of reason would find the following two conclusions debatable: (1) whether the district court was correct in its procedural ruling, and (2) whether the petition states a valid claim of the

1 denial of a constitutional right. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Both findings are necessary  
2 in order to issue a COA. *Id.* at 485. As to the latter requirement, a petitioner must make “a substantial  
3 showing of the denial of a constitutional right,” which may be satisfied by “showing that reasonable jurists  
4 could debate whether (or for that matter, agree that) the petition should have been resolved in a different  
5 manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Id.* at  
6 484 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). Any doubt about whether the  
7 petitioner has met the necessary standard should be resolved in his favor. *Lambright v. Stewart*, 220 F.3d  
8 1022, 1025 (9th Cir. 2000).

## 9 **II. ANALYSIS**

10 Petitioner requests the Court issue a COA on two grounds. First, Petitioner argues he diligently  
11 pursued all state remedies before filing his habeas petition in federal court and his failure to exhaust was  
12 due to extraordinary circumstances. Second, Petitioner contends that his constitutional rights were  
13 violated by ineffective assistance of counsel.

### 14 ***A. Reasonable Jurists Could Debate Whether Petitioner’s Claims Were Procedurally Barred***

15 This Court denied Petitioner’s habeas petition on procedural grounds, finding that Petitioner  
16 failed to exhaust his state remedies. (Dkt. No. 25.) While acknowledging that he failed to exhaust his  
17 state remedies, Petitioner argues that this failure resulted from extraordinary circumstances: Petitioner  
18 claims that his counsel failed to inform him that his motion at the state trial court to withdraw his guilty  
19 plea was transferred to the Washington State Court of Appeals as a PRP. (Mot. for COA 5 (Dkt. No.  
20 29).) Further, Petitioner claims that he did not receive timely notice of the Appellate Court’s decision  
21 because he was in the process of being relocated between correctional institutions. (*Id.*) Essentially,  
22 Petitioner seeks equitable tolling for the period between the Washington Court of Appeal’s dismissal of  
23 his petition and when he received actual notice of that dismissal. In order to prevail, a litigant seeking  
24 equitable tolling must establish two elements: (1) he has been pursuing his rights diligently, and (2) some  
25 extraordinary circumstance stood in his way. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (citing

